UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/CN.4/L.511
6 July 1995

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Forty-seventh session
2 May - 21 July 1995

DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION

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CHAPTER IV

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

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GE.95-62571 (E)

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CHAPTER IV

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

A. Introduction

1. The Commission, at its thirtieth session (1978), included the topic "International liability for injurious consequences arising out of acts not prohibited by international law" in its programme of work and appointed Mr. Robert Q. Quentin-Baxter Special Rapporteur. 1/

2. The Commission, from its thirty-second (1980) to its thirty-sixth session (1984), received and considered five reports from the Special Rapporteur. 2/ The reports sought to develop a conceptual basis and schematic outline for the topic and contained proposals for five draft articles. The schematic outline was set out in the Special Rapporteur's third report to the thirty-fourth session of the Commission in 1982. The five draft articles were proposed in the Special Rapporteur's fifth report to the thirty-sixth session of the Commission in 1984. They were considered by the Commission, but no decision was taken to refer them to the Drafting Committee.

3. The Commission, at its thirty-sixth session (1984), also had before it the following materials: the replies to a questionnaire addressed in 1983 by the Legal Counsel of the United Nations to 16 selected international organizations to ascertain whether, amongst other matters, obligations which States owe to each other and discharge as members of international organizations may, to that extent, fulfil or replace some of the procedures referred to in the schematic outline 3/ and a study prepared by the

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1/ At that session the Commission established a working group to consider, in a preliminary manner, the scope and nature of the topic. For the report of the Working Group see Yearbook ... 1978, vol. II, (Part Two), pp. 150-152.

2/ For the five reports of the Special Rapporteur, see Yearbook ... 1980, vol. II (Part One), p. 247, document A/CN.4/334 and Add.1 and 2; Yearbook ... 1981, vol. II (Part One), p. 103, document A/CN.4/346 and Add.1 and 2; Yearbook ... 1982, vol. II (Part One), p. 51, document A/CN.4/360; Yearbook ... 1983, vol. II (Part One), p. 201, document A/CN.4/373; Yearbook ... 1984, vol. II (Part One), p. 155, document A/CN.4/383 and Add.1.

3/ Yearbook ... 1984, vol. II (Part One), p. 129, document A/CN.4/378.

secretariat entitled "Survey of State practice relevant to international liability for injurious consequences arising out of acts not prohibited by international law". 4/

4. The Commission, at its thirty-seventh session (1985), appointed Mr. Julio Barboza Special Rapporteur for the topic. The Commission received eight reports from the Special Rapporteur from its thirty-seventh (1985) to its forty-fourth session (1992). 5/ At its fortieth session (1988), the Commission referred to the Drafting Committee draft articles 1 to 10 proposed by the Special Rapporteur for Chapter I (General Provisions) and Chapter II (Principles). 6/ At its forty-first session (1989), the Commission also referred to the Drafting Committee the revised version of those articles which had already been referred to the Drafting Committee at the previous session. 7/

5. At its forty-fourth session (1992), the Commission established a Working Group to consider some of the general issues relating to the scope, the approach to be taken and the possible direction of the future work on the topic. 8/ On the basis of the recommendation of the Working Group, the Commission at its 2282nd meeting on 8 July 1992, took the following decisions:

4/ Yearbook ... 1985, vol. II (Part One) Addendum, document A/CN.4/384.

5/ For the seven reports of the Special Rapporteur, see Yearbook ... 1985, vol. II (Part One), p. 97, document A/CN.4/394; Yearbook ... 1986, vol. II (Part One), p. 145, document A/CN.4/402; Yearbook ... 1987, vol. II (Part One), p. 47, document A/CN.4/405; Yearbook ... 1988, vol. II (Part One), p. 251, document A/CN.4/413; Yearbook ... 1989, vol. II (Part One), p. 131, document A/CN.4/423; document A/CN.4/428 and Corr.1 and 4 (all languages), Corr.2 (English only), and Corr.3 (Spanish only) and Add.1; document A/CN.4/437 and Corr.1 and document A/CN.4/443 and Corr.1 and Corr.2 (Spanish only).

6/ For the text see Yearbook ... 1988, vol. II (Part Two), p. 9.

7/ See Yearbook ... 1989, vol. II (Part Two), para. 311. Further changes on some of those articles were again proposed by the Special Rapporteur in his Sixth Report, see (Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10) (A/45/10), para. 471.

8/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10 (A/47/10), p. 127-129.

"(a) Scope of the topic

(i) The Commission noted that, in the last several years of its work on this topic, it has identified the broad area and the outer limits of the topic but has not yet made a final decision on its precise scope. In the view of the Commission, such a decision at this time might be premature. The Commission, however, agreed that, in order to facilitate progress on the subject, it would be prudent to approach its consideration within that broad area in stages and to establish priorities for issues to be covered.

(ii) Within the understanding set forth in paragraph (i) above, the Commission decided that the topic should be understood as comprising both issues of prevention and of remedial measures. However, prevention should be considered first; only after having completed its work on that first part of the topic would the Commission proceed to the question of remedial measures. Remedial measures in this context may include those designed for mitigation of harm, restoration of what was harmed and compensation for harm caused.

(iii) Attention should be focused at this stage on drafting articles in respect of activities having a risk of causing transboundary harm and the Commission should not deal, at this stage, with other activities which in fact cause harm. In view of the recommendation contained in paragraph (ii) above, the articles should deal first with preventive measures in respect of activities creating a risk of causing transboundary harm and then with articles on the remedial measures when such activities have caused transboundary harm. Once the Commission has completed consideration of the proposed articles on these two aspects of activities having a risk of causing transboundary harm, it will then decide on the next stage of the work."

"(b) The approach to be taken with regard to the nature of the article or of the instrument to be drafted

(iv) In the view of the Commission it would be premature to decide at this stage on the nature of either the articles to be drafted or the eventual form of the instrument that will emerge from its work on this topic. It would be prudent to defer such a decision, in accordance with the usual practice of the Commission, until the completion of the work on the topic. The Commission will examine and adopt the articles proposed for this topic, in accordance with its usual practice, on the basis of

the merits of the articles, their clarity and utility for the contemporary and future needs of the international community and their possible contribution to the promotion of the progressive development of international law and its codification in this area."

"(c) Title of the topic

(v) In view of the ambiguity in the title of the topic as to whether it includes 'activities' or 'acts', the Commission decided to continue with its working hypothesis that the topic deal with 'activities' and to defer any formal change of the title, since in the light of the future work on the topic additional changes in the title may be necessary. The Commission will therefore wait until it is prepared to make a final recommendation on the changes in the title."

"(d) Recommendation on the report of the Special Rapporteur for the next year

(vi) The Commission took note with thanks and appreciation of the previous reports of the Special Rapporteur in which the issues of prevention were examined in respect of both activities having a risk of causing and those causing transboundary harm. It requested that the Special Rapporteur, in his next report to the Commission, should examine further the issues of prevention only in respect of activities having a risk of causing transboundary harm and propose a revised set of draft articles to that effect." 9/

6. At its forty-fifth session (1993), the Commission considered the ninth report of the Special Rapporteur (A/CN.4/450) devoted to the issue of prevention and referred draft article 10 (non-discrimination), which the Commission had examined at its forty-second session (1990), and articles 11 to 20 bis to the Drafting Committee.

7. At its forty-sixth session (1994), the Commission had before it the tenth report of the Special Rapporteur (A/CN.4/459) addressing three issues: prevention ex post, State liability and civil liability. 10/ The Commission decided to defer consideration of the report and instead concentrate work on the articles of this topic already before the Drafting

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9/ Ibid.

10/ A summary of the tenth report is contained in Official Records of the General Assembly, Forty-ninth Session, Supplement No.10 (A/49/10), paras. 362-379.

Committee. At the same session, the Commission provisionally adopted on first reading the following draft articles with commentaries thereto: 1 (scope of the present articles); 2 (use of terms); 11 (prior authorization); 12 (risk assessment), 13 (pre-existing activities); 14 (measures to prevent or minimize the risk), 14 bis [20 bis] (non-transference of risk); 15 (notification and information); 16 (exchange of information); 16 bis (information to the public); 17 (national security and industrial secrets); 18 (consultations on preventive measures); 19 (rights of the State likely to be affected); and 20 (factors involved in an equitable balance of interests).

B. Consideration of the topic at the present session

1. Draft articles adopted by the Drafting Committee at the forty-seventh session of the Commission

8. At its ... meeting held on ... July 1995, the Commission considered and provisionally adopted the following articles which had been referred to the Drafting Committee at its fortieth and forty-first sessions in 1988 and 1989: article A[6] (freedom of action and the limits thereto); article B[7] (cooperation); article C[8 and 9] (prevention); and article D[9 and 10] (liability and compensation). The text of those articles and the commentaries thereto are reproduced in Section C.2 below.

2. The eleventh report of the Special Rapporteur submitted at the present session

9. At the present session, the Commission had before it the Special Rapporteur's eleventh report (A/CN.4/468) which was introduced at the Commission's 2397th meeting, held on 13 June 1995. The Commission decided to consider the report, together with the tenth report (A/CN.4/459) submitted in 1994, at its next session. The Commission, however, allocated a few meetings during which members of the Commission who wished to make preliminary observations on the two reports be able to do so. At the 2397th to 2399th meetings held on 8, 9 and 13 June 1995, some members of the Commission expressed preliminary views on both reports; a summary of those views is contained in section 3 below.

10. The Commission also had before it a study prepared by the Secretariat pursuant to a request by the General Assembly contained in paragraph 5 of its resolution 49/51 of 9 December 1994. The study is entitled "Survey of liability regimes relevant to the topic of international liability for injurious consequences arising out of acts not prohibited by international law" (A/CN.4/471).

11. The eleventh report dealt with the role of harm in the articles of this topic. The report characterized it as the condition sine qua non of any liability and compensation which may be due. The focus of the report, however, was on harm to the environment. Other forms of harm, namely harm to persons and property, had already been discussed in previous reports, including the eighth report (A/CN.4/443, paras. 41-51). The question of harm to the environment had not been sufficiently developed.

12. The report referred to the increasing recognition of the importance of the environment in terms of its economic value, its health value as well as its non-material value to our civilization. The recognition is evidenced not only by the very large number of treaties, designed in general to prevent harm to the environment, but also by inclusion of harm to the environment within the general definition of harm. 11/ Furthermore, the concept of harm to the environment has been incorporated into the domestic laws of a number of States including Norway, Finland, Sweden, Germany, Brazil and the United States. The Special Rapporteur, therefore, proposed to incorporate in the definition of harm, harm to the environment.

13. In order to define harm to the environment, one needs a definition of the environment itself. Indeed, the definition of environment will determine the scope of harm to the environment. At the present, however, there is no universally accepted concept of environment; elements considered to be part of the environment in the definition of environment in some conventions are not found in others. A restricted concept of environment limits harm to the environment exclusively to resources such as air, soil, water, fauna and flora and their interactions. A broader concept covers landscape and what are

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11/ See, for example, article 2 (7) (d) of the 1993 Convention on civil liability for damage resulting from activities dangerous to the environment; article 1 (c) of the Convention on the transboundary effects of industrial accidents; article 1 (20) of the Convention on the Protection and use of transboundary watercourses and international lakes; article 8 (2) (a), (b) and (d) of the Convention on the regulation of Antarctic mineral resource activities; and article 9 (c) and (d) of the Convention on civil liability for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels. See also the directives proposed by the ECE Task Force on Responsibility and Liability regarding Transboundary Water Pollution and the draft protocol on liability to the Basel Convention (UN/CHW.2/3) and Security Council resolution 687 (1991) where it states that "Iraq ... is liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - ... as a result of its unlawful invasion and occupation of Kuwait".

called "environmental values" of usefulness or pleasure produced by the environment. Thus one speaks of "service values" and "non-service values"; the former would, for example, include a fish stock that would permit a service such as commercial or recreational fishing, while the latter would include the aesthetic aspects of the landscape, to which the population attaches value and the loss of which can cause them displeasure, annoyance or distress. The broad definition also includes property forming part of the cultural heritage.

14. In the view of the Special Rapporteur, any definition of the environment should exclude those parts that are already included in the traditional definition of harm and enjoy protection under international law, e.g. anything that causes physical harm to persons or their health, whether directly or as a result of environmental damage. This approach has been taken by the 1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment. The Special Rapporteur expressed uncertainty as to the inclusion of "the cultural environment" in the definition of the environment. While admitting its importance, he felt that it should not be included in the definition of the environment for the purposes of compensation because these types of property are already protected by the general concept of harm.

15. Similarly, the Special Rapporteur felt that "landscapes" should not be included as "elements" or "components" in the definition of environment. They should be considered "values" of the environment which are treasured by the population. This loss should therefore be compensated.

16. With respect to reparation of harm to the environment, the report raised two questions: first who shall be deemed to be the injured party and second what does such harm consist of? In the view of the Special Rapporteur, since environment <u>per se</u> is not susceptible to private ownership, but belongs to the community as a whole, the State whose environment has been damaged should be the party entitled to reparation. States may grant in their rights in this regard to government agencies or <u>non-governmental welfare organizations</u>. Reference in this context was made to the same domestic legislation in the United States where government agencies and Indian tribes are enabled by statute to act as trustees in matters relating to certain environmental damage.

17. As regards reparation to the environment, the Special Rapporteur made a distinction between the requirement of reparation in the draft articles on State responsibility and that in this topic. The rules of reparation in the former were to be in conformity with the principle enunciated by the decision in the Chorzow Factory case, namely reparation should wipe out the consequences of the wrongful act and re-establish the situation which would, in all probability, have existed had that act not been committed. In his view, the rules of reparation in this topic did not follow the Chorzow dictum, since this topic involved activities which were not prohibited by international law. None the less, the Chorzow dictum also provided guidance in this field because of its reasonableness and the fairness it embodied.

18. Many existing civil liability conventions seem to have ignored certain forms of reparation such as naturalis restitutio, focusing, instead, on monetary compensation. However, as regards damage to the environment, the most common form of reparation provided for in the existing conventions seems to be almost the same as naturalis restitutio, e.g. restoration of the damaged elements of the environment. Members of an endangered or destroyed species can be reintroduced into an ecosystem where enough members of the species exist elsewhere. Equivalent compensation, on the other hand, would primarily be directed, in the case of total destruction of a certain component, to the introduction of an equivalent component; only if that were not possible, would monetary compensation be required. The existing civil liability conventions also include in the concept of damage, the costs of preventive measures and any damage or loss caused by these measures. The Special Rapporteur found this approach to be reasonable and appropriate also for the present topic.

19. The Special Rapporteur explained that, in his view, the most appropriate remedy for harm to the environment was the restoration of the environment. The remedy was more desirable in view of the difficulties in making any assessment of harm to the environment per se. Nevertheless, there are situations in which partial or total restoration of the environment is impossible and monetary compensation has to be assessed. He noted that a number of models may be adopted for that purpose. One is to assess the costs of restoration, the other includes the market value that the environmental

damage has rendered inassessible, hedonic pricing, 12/ or contingent valuation methodology, 13/ etc.

20. In the light of the above explanations, the Special Rapporteur proposed a text for the definition of harm. 14/

12/ Hedonic pricing methods take the market value added to the value of private ownership with designated environmental amenities and seek to transpose such values to public resources with comparable amenities.

13/ This method has been developed to measure the value by asking people how much they would be willing to pay, for example through a tax increase, to protect a natural resource from harm. This method has been criticized, it may be noted, for it does not reflect real economic behaviour and cannot therefore be relied upon.

14/ The proposed text reads as follows:

"'Harm' means:

(a) Loss of life, personal injury or impairment of the health or physical integrity of persons;

(b) Damage to property or loss of profit;

(c) Harm to the environment, including:

(i) The cost of reasonable measures taken or to be taken to restore or replace destroyed or damaged natural resources or, where reasonable, to introduce the equivalent of these resources into the environment;

(ii) The cost of preventive measures and of any further damage caused by such measures;

(iii) The compensation that may be granted by the court in accordance with the principles of equity and justice if the measures indicated in subparagraph (i) were impossible, unreasonable or insufficient to achieve a situation acceptably close to the status quo ante. Such compensation should be used to improve the environment of the affected region:

- the environment includes ecosystems and natural, biotic and abiotic resources, such as air, water, soil, fauna and flora and the interaction among these factors.

- the affected State or the bodies which it designated under its domestic law shall have the right of action for reparation of environmental damage.

3. Preliminary comments by some members of the Commission on the tenth and eleventh reports

21. A few members of the Commission expressed preliminary views on the tenth and eleventh reports of the Special Rapporteur (A/CN.4/459 and A/CN.4/468). They found the reports well researched, presenting an approach which reflected a judicious combination of codification and progressive development of international law in the area.

22. As regards the tenth report, setting forth a regime of liability, it was noted that the Special Rapporteur had examined the questions of civil liability together with the responsibility of the State. This approach was generally supported, particularly the fact that the draft articles identified circumstances in which States may have subsidiary or residual liability. In this context, it was noted that the Special Rapporteur had rightly distinguished four major areas: first, the role of the operator; secondly, the role of risk capital; thirdly, the international mechanism for risk insurance and financing; and fourthly, the liability of the operator.

23. It was also noted that the articles rightly dealt with both issues of substantive law of liability and questions of procedure. The Special Rapporteur's view that the issue of civil liability must also be examined in connection with the responsibility of the State was generally supported. It was also observed that there were other common issues between the two topics such as grounds for exoneration from liability and enforcement of judgements.

24. In terms of structure, it was suggested that the draft articles could be divided into two separate chapters, one concerning the rule of liability per se and the other concerning procedure. With regard to the latter, it was observed that, in general, many States prescribed that the competent court was the court at the place where the harm occurred. However, support was expressed for the proposal by the Special Rapporteur of not confining the competence of the court to the State where the harm occurred, alone, but allowing some leeway to seek options, including the court of the affected State.

25. As regards the issue of prevention ex post, the comment was made that the Special Rapporteur's original proposal of including prevention of ex post in the chapter on prevention and not on reparation was prudent and reasonable. It was noted that the concept of "response measures", as discussed by the Special Rapporteur, was now found in several agreements, and his proposal represented progressive development of law on that subject. In that

connection, the comment was made that placing heavier and wider obligations of prevention on States and operators engaging in activities that entailed a risk of causing transboundary harm would certainly have the effect of reducing the likelihood of such harm occurring.

26. It was further noted that a clear concept of harm was essential in any serious discussion on a regime of liability. It was also stated that the Commission must consider the implications of imposing liability for wrongful acts when a State failed to fulfil its obligations of prevention, in relation to the articles on State responsibility.

27. The eleventh report of the Special Rapporteur was welcomed. It was noted that the Commission's work must reflect the recent international trend, which was rapidly gaining pace, towards preserving the natural world.

28. Overall the view of the Special Rapporteur on the evaluation and restoration of damaged natural resources was endorsed. The comment was made that in the proposed definition for harm, in the paragraph concerning remedial action for harm to the environment, the Special Rapporteur recognized the right of action by the State or by the bodies which it designated under its domestic laws. It was stated that this issue, while important, went beyond the ordinary meaning of the definition and could perhaps be placed in another part, on regulation of the conduct of the State or operator.

29. It was noted that the Special Rapporteur had referred to "non-governmental welfare organizations" in paragraph 22 of the report and, in paragraph 36, to "the competence of certain public authorities" as "the bodies" designated by the State. However, it was not clear why the bodies designated by the State were entitled to have recourse to the right of action. The question was raised as to whether individuals had locus standi to make a claim for harm to the environment where a State or the institution designated by the State refused to bring a claim.

30. As to the definition of the "environment" concern was expressed about the wisdom of excluding the human factor. It was stated that beginning with the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), the human factor had been present in a great many instruments. As an example, article 1, paragraph 4, of the United Nations Convention on the Law of the Sea was cited.

31. In that connection, it was further stated that paragraphs 6, 8, 9 and 16 of the report of the Special Rapporteur appeared to suggest that, since human

life was protected by law in a number of domains, it should not be covered by instruments on the environment. According to this view, when work had first begun on an instrument for environmental protection several decades ago, the title used had been "protection of the human environment". Human beings had thus been placed at the very centre of the issue from the outset. It therefore seemed questionable that human beings should now be entirely excluded from consideration in an instrument on liability for environmental damage.

32. It was stated that the definition of harm must be reasonably comprehensive without being overburdened with detail. In a preliminary stage, it ought to cover the following elements: loss of life, personal injury or other impairment of health, loss of or damage to property within the affected State, as well as impairment of the natural resources and human or cultural environment of that affected State.

33. It was pointed out that the basis of obligation to compensate for transboundary harm not prohibited by international law was of the utmost importance to the topic. In this regard it was observed that, where the obligation to compensate was set out clearly in a treaty, there should be no legal difficulty in determining the basis for the obligation. Difficulties arose however, where there was no such treaty. In such cases, it was difficult to determine which law was applicable. It was felt that, taking into account the humanitarian consideration, it should not be impossible to find a basis for an obligation to compensate, at least in cases of very hazardous activities. This was a field in which, in many national systems of law, the obligation to compensate no longer entailed that the injured party had to prove that there had been a failure to take all precautions at source to prevent the harm from taking place. It was noted that there was a view that in many cases the solution might be a claim for compensation at the level of private international law, but doubt was expressed as to whether that was possible if the States concerned were both geographically distant and had different national legal systems. Logistical difficulties were also mentioned as factors against litigation abroad.

34. Consequently, it was felt that there was a need to consider elaborating rules applicable between States under public international law, without prohibiting individual claimants from instituting proceedings under private international law if they so desired.

35. The view was expressed that the Commission should focus its attention on the definition of the word "harm" and avoid spending time on other questions that could be considered at a later stage, notably: the necessity that the harm for which a particular claim for compensation was made should not be remote, but a reasonably direct consequence of the activity in the State of origin; and the standards to be utilized in determining the amount of compensation payable in particular cases; and who would be entitled to submit claims. Reference was made to the prospects of catastrophic harm which might require a different approach to compensation. However, the Commission, it was noted, should, at least in principle, adhere to the fundamental idea that the primary purpose of compensation was to restore the situation to what it was prior to the harm.

36. The comment was further made that the first three sentences of paragraph 18 of the report seemed to blur the distinction between "harm" and "damage", nor was the distinction made very clear in the proposed definition of harm contained in paragraph 38; the words "harm" and "damage" were used interchangeably. It was admitted that was the case in no less authoritative an instrument than the United Nations Convention on the Law of the Sea. There the words "harm" and "harmful" were used only in article 1, paragraph 4, and article 206. Everywhere else in that instrument the term "damage" was used. It was felt that the concept of harm should be clearly defined since it was essential to any serious discussion on a regime of liability.

37. Reference was made to paragraph 24 of the report stating that the Chorzow rule of restitutio in integrum was strictly applicable to breaches of what were called primary rules and that it "is not being as rigorously respected in this field as in that of wrongful acts". It was felt that the Chorzow rule must also serve as an indicator of the degree to which reparation must be made for damage to the environment. Thus, subject to treaty obligations, reparation should seek as far as possible to restore the status quo ante.

38. It was noted that the topic presented particularly difficult issues for developing States. Since developing States did not have the technology to carry out such acts and were more likely to be affected by them, they would generally favour a regime of strict controls, but as engaging in those acts was imperative for development, they must perhaps agree to a somewhat less strict regime. Likewise in favour of a strict regime of controls were developing States located near other States (whether slightly developed,

almost developed or fully developed), in which activities of that nature took place and which felt directly threatened by those acts, as well as island States whose economies were primarily dependent on tourism and for whom the integrity of the natural environment was of the utmost importance.

39. The comment was further made that developed States might favour a liberal regime since they generally engaged in such activities. But it must be borne in mind that some of those States were less developed than others and therefore engaged in such activities to a lesser degree and might therefore prefer a stricter regime. It was thus noted that the dichotomy established between developed and developing States for the purposes of discussing this subject was at best only relevant as a generalization. Otherwise it might be misleading. Ultimately, it was stated that the Commission must find a solution on the basis of State practice, an examination of relevant international conventions and proposals which developed international law.

40. With respect to the definition of harm proposed by the Special Rapporteur the suggestion was made to introduce subparagraphs (i), (ii) and (iii) with a phrase such as: "in assessing reparation for harm to the environment, due account may be taken of". In order to stress the relevance of the Chorzow rule in the field, it was proposed to make even more explicit the text of paragraph (c) (i) by inserting the words the "status quo ante" after "restore". It was felt that the phrase "where reasonable" in subparagraph (i) did not sufficiently capture the circumstances in which the equivalent of resources not restored or replaced might be introduced into the environment. Subparagraph (iii) was found insufficiently stringent, and it was proposed to replace it with the following wording: "the reasonable compensation in cases where the measures indicated in paragraph (c) (i) were impossible or insufficient to achieve a situation acceptably close to the status quo ante".

C. Draft articles on international liability for injurious consequences arising out of acts not prohibited by international law

1. Text of the draft articles provisionally adopted by the Commission so far on first reading

Addendum

2. Text of draft articles A[6], B[7], C [8 and 9] and D[9 and 10] with commentaries thereto adopted by the Commission at its forty-seventh session

Addendum